

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

B. GARY DAY,

Plaintiff,

vs.

WALTER EDWARD FRENCH, III,
CHRISTOPHER B. FRENCH, et al.,

Defendants.

*
*
*
*
*
*
*
*
*

3:06 CV-260MHT

JOINT MOTION TO LIFT STAY
AND MOTION FOR ENTRY OF RULE 26 ORDER

COMES NOW, Plaintiff B. Gary Day, and Defendants Walter Edward French, Christopher B. French, Jerome Short, and John Flory, in the above-styled cause, by and through counsel of record, and request this Court to vacate its previous Order staying the above-styled action, reinstate the case on the Court's active trial docket and enter a new or revised Rule 26 Order. In support of this motion, the parties state as follows:

1. The parallel criminal proceedings previously pending against Christopher B. French and Jerome Short in the Circuit Court of Russell County, Alabama have been nolle prossed by the Russell County District Attorney's office;
2. A stay of this civil action is no longer necessary to protect the Defendants' rights against self incrimination guaranteed by the Fifth Amendment to the United States Constitution.
3. Should new or additional criminal charges be sought against any of the Defendants as a result of the events giving rise to the present action, Defendants

reserve the right to seek any and all appropriate relief arising thereof, including but not limited to the entry of a stay of this action.

WHEREFORE the parties respectfully request that the stay implemented by this Court be lifted and a new or revised Rule 26 Order be entered.

Respectfully submitted this the 20th day of December, 2006.

ATTORNEYS FOR DEFENDANTS –
WALTER EDWARD FRENCH, CHRISTOPHER
B. FRENCH and JEROME SHORT:

/s/ Leon A. Boyd, V
HERMAN COBB (COB004)
LEON A. BOYD, V (BOY035)

OF COUNSEL:
COBB, SHEALY, CRUM & DERRICK, P.A.
Post Office Box 6346
Dothan, Alabama 36302
334-677-3000
334-677-0030 (fax)

ATTORNEYS FOR DEFENDANT –
JOHN FLORY:

/s/ Joel H. Pearson
ROGER S. MORROW (MOR032)
JOEL H. PEARSON (PEA019)

OF COUNSEL:
MORROW, ROMINE, & PEARSON, P.C.
Post Office Box 4804
Montgomery, Alabama 36103
334-262-7707
334-262-7742 (fax)

ATTORNEYS FOR PLAINTIFF –
B. GARY DAY:

/s/ James L. Martin
JAMES L. MARTIN (MAR031)

OF COUNSEL:
JAMES L. MARTIN, P.C.
Post Office Box 14
Eufaula, Alabama 36072-0014
334-687-2766
334-687-3574 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following by either electronic service or by placing a copy of same in the United States Mail, postage prepaid and properly addressed this the 20th day of December, 2006.

James L. Martin, Esq.
PO Box 14
Eufaula, Alabama 36072-0014

Sydney S. Smith, Esq.
1503 Broad Street
Phenix City, Alabama 36867

Joel H. Pearson, Esq.
PO Box 4804
Montgomery, Alabama 36103-4804

Kenneth L. Funderburk
PO Box 1268
Phenix City, Alabama 36868

/s/ Leon A. Boyd, V
OF COUNSEL